

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
BL SANTA FE, LLC, *et al.*, Case No. 21-11190 (MFW)
Courtroom No. 4
824 North Market Street
Wilmington, Delaware 19801
Debtors. September 23, 2021
2:00 P.M.

TRANSCRIPT OF TELEPHONIC SECOND DAY HEARING
BEFORE THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

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MATTERS GOING FORWARD ON DISCOVERY DISPUTES:

Debtors' Motion for Entry of Interim and Final DIP Orders (I) Authorizing the Debtors (A) to Obtain Post-Petition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief [D.I. 10; 8/30/21]

Ruling: 63

DEBTORS' WITNESS(s):

MICHAEL NORVET

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HOLLAND WITNESS(s):

ANDREW BLANK

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1 (Proceedings commence at 2:0 p.m.)

2 THE COURT: Good afternoon. This is Judge
3 Walrath. We're here in the BL Santa Fe case.

4 I will turn this over to counsel for the debtor.

5 MR. LUNN: Good afternoon, Your Honor. May I
6 please the court, Matthew Lunn from Young Conaway on behalf
7 of the debtor.

8 Referring to the agenda, Your Honor, we filed an
9 amended yesterday. I hope Your Honor was able to see that.
10 And as reflected in that amended agenda items one through
11 five all related to first day related relief that was being
12 sought on a final basis. All that relief has been entered by
13 Your Honor based on COC's or CNO's and we appreciate Your
14 Honor's attention to those matters.

15 The only matter that is going forward, then, today
16 is the DIP financing. With respect to that I will cede the
17 podium to our co-counsel, Mr. Wright.

18 MR. WRIGHT: Good afternoon, Judge.

19 THE COURT: Good afternoon.

20 MR. WRIGHT: With respect to -- this is agenda
21 item six and we're here on the final hearing on the debtor's
22 motion for entry of a final DIP order authorizing post-
23 petition DIP financing and use of cash collateral. That
24 motion was filed at Docket No. 10.

25 At the first day hearing, on August 31st, the

1 court entered an interim order approving the DIP financing.
2 That was Docket 51. We have had one objection filed by
3 Richard Holland and two of his entities. That is at Docket
4 64.

5 Now through this motion the debtors are asking the
6 court to approve the DIP financing that is being provided by
7 the existing lenders and those lenders are: DB Bishops which
8 is the senior lender secured by a lien on the real estate and
9 a lender in the BL Santa Fe entity; then Juniper Bishops
10 which is the mezzanine lender and they are secured by an
11 ownership interest in BL Santa Fe, and their loan is at the
12 BL Santa Fe entity.

13 We're asking the court to approve that financing
14 on a final basis. The financing will provide the funds
15 needed to cover the ongoing cost of construction of this
16 resort, to get it completed, and also the cost of
17 administration of the bankruptcy cases.

18 The terms of the financing are relatively
19 straight-forward. Each lender is financing under their
20 existing prepetition loan documents. So we don't have a new
21 set of DIP loan documents involved in this case like we
22 usually do. They are making their loans at their prepetition
23 interest rates. In the case of Juniper Bishops the financing
24 is in an amount up to \$5,858,670. In the case of DB Bishops
25 it is up to \$2,644,512 and that loan only comes into play if

1 needed, if they exceed the \$5.8 million.

2 The loans are secured by liens on each lenders'
3 existing collateral. There is no crossing between these
4 loans. Each lender is also receiving a superpriority
5 administrative claim. We have a confirmation hearing set in
6 this case on October 7th and closing is expected shortly
7 thereafter. So these are very short term loans.

8 The motion is supported by the debtors, by the
9 senior lenders, the mezzanine lender and by over 90 percent
10 of the owners of BL Santa Fe (Holding) which is the entity
11 that owns the BL Santa Fe (Mezz) entity which in turn owns
12 100 percent of BL Santa Fe.

13 As I said, the only objection filed is by Richard
14 Holland and two of his entities. Now Mr. Holland he's a
15 guarantor on the debt to each of these prepetition lenders as
16 well as our other members of the holding entity. He is also
17 the owner of two entities:

18 HRV Santa Fe which holds an interest in Holding.
19 Its interest, he says, is 8 and a half percent, the other
20 members say it may be less than 5 percent, but at any rate is
21 under 10 percent.

22 HRV Hotel Partners was the developer on the
23 project, they were terminated as developer. And as the court
24 is aware we have a receiver in place, the receiver is using a
25 construction company and the project is being completed.

1 The Holland party's objection is supported by one
2 declaration and that is by a guy named Andrew Blank. He is
3 not a creditor in this case. He is not a party in interest
4 in the case, but he is proposing, through the Holland
5 parties, an alternative DIP proposal. In reality, though,
6 Judge, as you can tell from reading their objection, it is an
7 alternative plan proposal, not a DIP proposal.

8 What they are trying to apparently do today is
9 turn this into a confirmation hearing instead of a final
10 hearing on a DIP. If you look at page 5 of their objection
11 it's a comparison of exit financing, not DIP financing. The
12 only DIP financing terms are found on page 6 which states
13 that the amount and type will be substantially similar to the
14 DIP loan that we have in place and the budget will be
15 substantially similar to the DIP loan that we have in place,
16 but that Mr. Blank will charging a 1 percent upfront fee and
17 then he's going to charge zero interest on a non-default rate
18 at 15 percent on a default rate.

19 Keep in mind that this is a DIP hearing, it's not
20 a confirmation hearing. The debtors have analyzed and looked
21 at these proposed terms and the debtors, after evaluating the
22 proposal have determined that in their best business judgment
23 they should proceed with the motion on file. That is keeping
24 in mind several factors:

25 One, the cost of switching horses at this point,

1 changing lenders and coming up with a new set of loan
2 documents, filing new motions, new (indiscernible). The
3 limited benefit of a lower interest rate when you have a very
4 short term loan in place. The fact that the interest that is
5 accruing on the mezzanine loan is going to be converted to
6 equity under the plan anyway. The risk of losing the
7 benefits of the plan that is on file that is already
8 supported by both lenders and the majority of the equity
9 holders.

10 So the debtors have made the decision on the basis
11 also of their positive prepetition lending relationship with
12 both lenders. What the testimony will show today is that
13 Juniper Bishops, the mezzanine lender, stepped up and has
14 been funding the cost of getting this construction finished.
15 There has been a very good ongoing working relationship
16 between the debtors and these lenders.

17 There is a preference by the debtors to not engage
18 in litigation with them. Mr. Blank would like to engage in
19 litigation with them over their exit fees. The debtors are
20 more focused on exiting bankruptcy quickly, getting a plan
21 confirmed quickly and getting this resort out of bankruptcy.
22 Mr. Blank, as I noted, has offered to fund litigation against
23 Juniper Bishops over its exit fee, but the debtors want to
24 exit and not be held down in litigation.

25 I would ask the court to include in today's

1 evidence the record that was already made at the first day
2 hearing and in particular their first day declaration of
3 Michael Norvet, the president of the debtor, and that's at
4 Docket 14.

5 With that, unless the court, would rather hear
6 from other parties, I'd be prepared to call Mr. Norvet as my
7 first witness.

8 THE COURT: Well, first, does anybody object to
9 the admission of Mr. Norvet's first day declaration?

10 MR. HORAN: Your Honor, Thomas Horan for the
11 Holland parties. We don't object, but we do wish to cross-
12 examine.

13 THE COURT: Alright, well subject to your right to
14 cross-examine then -- well, let's get the testimony in and
15 then I will hear your side of the story.

16 Mr. Norvet, is he here? If he can just say
17 something so he pops up on the screen.

18 MR. WRIGHT: Michael?

19 MR. NORVET: Can you hear me now?

20 THE COURT: Yes.

21 MR. NORVET: I'm sorry. I had you on mute. I
22 apologize.

23 THE COURT: I'm going to ask the clerk to
24 administer the oath to you. We don't have you on video, do
25 you have a video, Mr. Norvet?

1 MR. NORVET: Yes, I do. I don't know why it's
2 not. Is that coming through?

3 MR. WRIGHT: No.

4 THE COURT: No.

5 MR. NORVET: Let me try this again. Can you see
6 me now?

7 MR. WRIGHT: I see you now.

8 THE COURT: Now we see you. Alright, I will ask
9 you to raise your hand and as Ms. Neal to give you the oath.

10 MICHAEL NORVET, DEBTOR WITNESS, SWORN

11 THE CLERK: Please state your full name and spell
12 your last name for the record.

13 THE WITNESS: Michael Norvet, N-O-R-V-E-T.

14 THE COURT: Alright.

15 DIRECT EXAMINATION

16 BY MR. WRIGHT:

17 Q Mr. Norvet would you state your relationship to the
18 debtors?

19 A I am the president of the debtors and I'm also the
20 president of BL Santa Fe (Holding).

21 Q And how long have you held those positions?

22 (No verbal response)

23 Q Did you hear me?

24 THE COURT: It's locked.

25 THE WITNESS: From December 2020. Can you hear me

1 now?

2 MR. WRIGHT: Yes.

3 BY MR. WRIGHT:

4 Q How long have you been involved with the debtor's
5 business involving this resort in Santa Fe, New Mexico?

6 A Since January 2017.

7 Q And in what capacity?

8 A I have a carried interest in the general partner of
9 Evolution RE Bishops Lodge, LP which is the largest equity
10 holder of BL Santa Fe (Holding).

11 Q And what interest, roughly, does it hold in BL Santa Fe
12 (Holding)?

13 A Approximately 65 percent.

14 Q Alright, and when I'm talking to you today the entity
15 that owns the property is BL Santa Fe, correct?

16 A Correct.

17 Q And the entity that owns that is BL Santa FE (Mezz),
18 right?

19 A That's correct.

20 Q If I just refer to it as Mezz you will understand what
21 I'm talking about?

22 A Yes, I will.

23 Q Okay. Then the entity that owns the BL Santa Fe (Mezz)
24 entity is BL Santa Fe (Holding), correct?

25 A Correct.

1 Q And we can just refer to it as Holding?

2 A Correct.

3 Q And so as you just said the largest investor in Holding
4 is the Evolution RE Bishops Lodge, LP entity?

5 A Correct.

6 Q And that is the entity that you are involved with?

7 A That is correct.

8 Q So on behalf of that entity which has the largest
9 equity stake you -- would you say that you have a definite
10 interest in making sure that it is getting the best deal --
11 that you are getting the best deal for the creditors and the
12 equity in this case?

13 A Yes.

14 Q And you executed the declaration in support of the
15 debtor's first day motions, correct?

16 A Yes, I did.

17 Q And do you still stand by that testimony?

18 A Yes, I do.

19 Q Mr. Norvet, can the debtor's fund their operations and
20 the restructuring expenses of these Chapter 11 cases without
21 borrowing additional money?

22 A No, they cannot.

23 Q The debtors don't have any other source of liquid
24 assets in order to fund expenses. Is that right?

25 A That's correct.

1 Q So is borrowing money necessary to preserve the
2 debtor's assets?

3 A Yes.

4 Q What are the general terms of the DIP facility that the
5 debtors have proposed and asked the court to approve?

6 A With regard to Juniper its \$5.8 million. With regard
7 to DB Bishops its \$2.6 million. Both of those are under the
8 terms of the existing facilities prepetition lending and
9 under the current documents. And they're secured by each
10 existing -- the existing collateral of each loan.

11 Q And do you recall, roughly, what the interest rate is
12 on the Juniper loan?

13 A Yes. Its roughly 17 percent.

14 Q And how about the interest rate on the DB Bishops loan?

15 A 11 percent.

16 Q In your opinion are those interest rates market rates
17 for construction loans?

18 A In my opinion, yes.

19 Q Will the debtors be able to continue to fund their
20 operations and restructuring expenses if the DIP facility is
21 not approved?

22 A No.

23 Q So in your opinion is the approval that is being sought
24 today necessary in order for the debtors to be able to
25 advance their cases and get information?

1 A Yes, it is.

2 Q Now at the time of the bankruptcy filing were you aware
3 of any other viable alternative to the DIP facility that is
4 before the court?

5 A No, I was not.

6 Q Did you solicit any other DIP financing proposals prior
7 to filing?

8 A No, we did not. We felt like if there was -- if we did
9 there would be a priming issue with existing lenders, so we
10 chose not to.

11 Q And the existing lenders have liens on all of the
12 assets. Is that correct?

13 A Yes.

14 Q Now are you aware that Mr. Holland, and HRV Santa FE,
15 and HRV Hotel Partners have objected to the DIP financing?

16 A Yes, I am.

17 Q Now how is Mr. Holland involved with the property?

18 A Mr. Holland owns, through one of his entities, between
19 5 and 8 percent of Holding, the equity in Holding. He also,
20 through one of his entities, was the developer, but he has
21 since been terminated.

22 Q Have you reviewed the Holland party's objection?

23 A Yes, I have.

24 Q And after considering what is set forth in that
25 objection is it still your opinion that the debtors should go

1 forward with the current DIP facility on file before the
2 court?

3 A Yes, it is.

4 Q In your opinion does the alternative DIP financing that
5 is being offered by Mr. Blank and being promoted by the
6 Holland parties contain better terms --

7 A No, it doesn't.

8 Q -- for the debtors.

9 A Excuse me. No, I do not.

10 Q Why not?

11 A Well I think that acceptance of the DIP proposal would
12 require that we negotiate an entire restructuring proposal
13 that would add additional time and expense to the bankruptcy.
14 I also think it would prolong in terms of time exit from
15 bankruptcy. We're trying to do this in a relatively short
16 period of time.

17 It would also put the debtors in a contested situation
18 because I understand, under the terms of the alternative DIP
19 proposal, there would be a requirement for a second lien
20 which would be a priming issue that we would have a
21 difficulty overcoming.

22 I guess finally, we have had a long relationship with
23 Juniper with regard to this project. They have funded
24 millions of dollars outside of their loan agreement in order
25 to continue construction of the resort. For us that is an

1 important trust factor that we have with the existing
2 lenders.

3 Q Do you believe there would be any other added risk if
4 the debtors were to opt for the alternative DIP facility
5 proposed by the Holland parties over the proposed financing
6 that is before the court?

7 A Yes. I think we would have a risk of whether or not we
8 could complete a restructuring proposal to exit the filing or
9 the bankruptcy if we chose that alternative financing.

10 Q And what liens are you -- do you understand are being
11 proposed under the alternative DIP facility?

12 A There's a second lien on the property.

13 Q So that would be a lien that would come junior to the
14 lien of DB Bishops. Is that right?

15 A That's correct.

16 Q Effectively it would put it as a lien ahead of Juniper.
17 Is that right?

18 A That is correct.

19 Q Juniper, under the DIP financing before the court, does
20 not get a lien on the real estate, right?

21 A That's correct.

22 Q What about the zero percent interest rate that is being
23 offered in this Blank DIP financing. Does that make that
24 alternative DIP better in your opinion?

25 A No, it does not for the very reason that we have to

1 negotiate -- it required additional expenses to negotiate
2 documents during that period of time. So, no, I do not
3 believe that it would ultimately be a better deal.

4 In addition to that I would note that the interest paid
5 under the DIP facility with Juniper is capitalized in the
6 equity, preferred equity upon exit.

7 Q So, effectively, if the plan ultimately is approved at
8 the confirmation hearing then that interest just gets
9 converted to equity, right?

10 A That is correct.

11 Q Is a part of the factor here, in your opinion, on the
12 interest rates is a short term of the DIP financing?

13 A Yes. I mean it's a relatively short period of time and
14 the total interest cost would not be material given the
15 additional expenses that we would have to incur.

16 Q Now are you on the board of the Holding entity?

17 A Yes, I am.

18 Q Who else is on that board of managers?

19 A The other equity holders would include Nunzio DeSantis,
20 Alec Walter, Brad Brooks.

21 Q And between the group of you approximately what portion
22 of the equity of Holding do you all represent?

23 A Again, roughly, 95 to -- 92 to 95 percent of the
24 equity.

25 Q And what is the position of the board of managers of

1 Holding with respect to the DIP financing that is before the
2 court today?

3 A That we need to accept the current plan, current DIP
4 facility.

5 Q Now there is also a Mr. David Mack who was appointed as
6 the independent director. Is he in favor of the DIP
7 financing that is before the court today?

8 A Yes. To my knowledge he is.

9 Q Have you had numerous meetings with Mr. Mack and the
10 board?

11 A Yes.

12 Q And so are the entire board and Mr. Mack unanimously in
13 favor of having the financing that has been proposed to the
14 court approved today?

15 A Yes.

16 Q Anything else you want to add as to why you think the
17 financing before the court is better than the proposal from
18 Mr. Holland?

19 A I think we have covered most of it. I would just re-
20 emphasize the fact that we have had a long relationship with
21 Juniper. They have done everything that they have said they
22 would do and for us there is a trust factor there that we
23 feel is important in the overall aspect of this.

24 We have covered the additional expense that we think we
25 would have to incur and so I would leave it at the fact that

1 based upon all those components we unanimously favor the
2 current DIP facility.

3 Q If you would tell the court what the debtors did in
4 order to (indiscernible) the alternative DIP financing
5 proposal?

6 A We had numerous meetings, discussions, conversations
7 with regard to the alternative and looking at all aspects of
8 it, numerous calls, teleconferences and so forth.

9 MR. WRIGHT: I will pass the witness.

10 THE COURT: Mr. Horan?

11 MR. HORAN: Yes. Good afternoon, Your Honor.

12 CROSS EXAMINATION

13 BY MR. HORAN:

14 Q Good afternoon, Mr. Norvet.

15 A Good afternoon.

16 Q In your first day declaration you stated that the
17 belief it would have been highly unlikely if not impossible
18 to obtain post-petition financing from third parties. Why
19 did you believe that to be true when you executed the
20 declaration on August 30th?

21 A I'm sorry, I need to turn this up, I didn't hear the
22 question.

23 Q I will repeat that. In your first day declaration, Mr.
24 Norvet, you stated that the debtors believed it would have
25 been highly unlikely, if not impossible, to obtain post-

1 petition financing offers from third parties in light of the
2 current state of the hotel's operations. Why did you believe
3 that to be true when you executed the declaration on August
4 30th?

5 A Because the hotel was under construction at that time
6 and it would have been difficult to find alternative
7 financing at that point.

8 Q And you know who Andrew Blank is?

9 A I do.

10 Q And do you recall when you first became aware of Mr.
11 Blank?

12 A It was January of 2021.

13 Q And he sought to purchase the company at auction,
14 didn't he?

15 A That is correct.

16 Q So why wouldn't you have approached Mr. Blank given his
17 interest?

18 A Well because he spent most of the last four or five
19 months attempting to purchase the property at foreclosure
20 which would have eliminated all the equity positions in the
21 company.

22 Q So in other words you didn't want to do business with
23 him?

24 A We didn't particularly care for his approach to it in
25 that it would have eliminated our position in the company.

1 Q Have you reviewed the proposal that Mr. Blank provided?

2 A Yes, I have.

3 Q Do you feel like you're familiar with the terms?

4 A For the most part, yes.

5 Q And would this proposal wipe out equity?

6 A The current proposal would not.

7 Q Did you to talk to anyone other than Juniper about
8 financing a DIP and doing restructuring transactions?

9 A No.

10 Q And, again, why not?

11 A Because we felt like the current DIP facility or the
12 position of Juniper would get us to the end of construction,
13 opening of the resort and to the complete construction.

14 Q How would you know if the Juniper deal is the best deal
15 available if it hasn't been exposed to the market?

16 A I don't really know.

17 Q Do you think that is something that you should know
18 given the declaration that you've signed?

19 A I think given the timeframe that we're working under it
20 would be difficult to do.

21 Q Did you perform any analysis on this proposal yourself?

22 A Yes.

23 Q And what sort of analysis did you perform?

24 A We did a cost comparison. We did, as I said, numerous
25 teleconferences. Primarily did a cost comparison between the

1 two.

2 Q And what was the result of that cost comparison? Can
3 you walk me through that, please?

4 A We determined, at that time, that the current DIP
5 proposal was, in fact, a better transaction for us in the
6 long term through restructuring.

7 Q I appreciate that answer, but it's not precisely
8 responsive to my question. Can you talk about what the
9 differences were in the cost with any specificity? I want to
10 understand what the results were that you came to.

11 A Well there were numerous exit fees and so forth that
12 would have been required under the Blank proposal that would
13 not be required under the existing DIP facility. There were
14 additional expenses that would be required to document a new
15 facility that we have already incurred with the current DIP
16 facility. So we did analysis on each one of those.

17 Q You are aware that you proposed a zero (indiscernible)?

18 A Yes.

19 Q And is zero percent less than 6 percent?

20 A Yes, but that is not what we're being asked to analyze.

21 Q Okay. That was the question that I asked you.

22 In fact, Mr. Blank is proposing no exit fee, but the
23 Juniper facility has a 10 percent exit fee, right?

24 A It does for -- yes.

25 Q And no exit fee is better than a 10 percent exit fee

1 under most circumstances?

2 A Yes.

3 Q Have you -- you testified that you talked with the
4 board about the existence of Mr. Blank's proposal?

5 A Correct.

6 Q And what did you tell the board about it?

7 A I shared the proposal with the members of the board,
8 with the independent director. They were all aware of it.
9 They all reviewed it?

10 Q And how did they respond to it?

11 A In the same manner as I discussed earlier.

12 Q Talk about the overwhelming acceptance of the
13 prepackaged plan. Investors didn't have a chance to consider
14 the Blank proposal before they voted on the prepackaged plan,
15 did they?

16 A No.

17 Q They just voted yes or no on Juniper?

18 A Correct.

19 Q So equity didn't, in fact, consider two alternatives in
20 choosing one over the other, correct?

21 A Correct.

22 Q It was take it or leave it?

23 (No verbal response)

24 Q Did the debtors ask Mr. Blank if he would be willing to
25 do a standalone DIP?

1 A (Indiscernible).

2 Q Did the debtors ask Mr. Blank if he would be willing to
3 do a standalone DIP; in other words, a DIP without a
4 restructuring?

5 A No. Not that I am aware of, no.

6 Q And why not?

7 A It just never came up.

8 Q If you ruled out the possibility of Mr. Blank providing
9 a DIP is his proposal still under consideration in so far as
10 it proposes a restructuring of the business?

11 A I would say, yes.

12 Q Are you aware that on September 21st your counsel wrote
13 to Mr. Blank's attorney, copied me on it and said that the
14 debtors rejected Mr. Blank's proposed terms, have they?

15 A No, not that I am aware of.

16 Q You didn't negotiate with Mr. Blank over this?

17 A Not that I am aware of.

18 Q Are you concerned that the Juniper financing only
19 brings the debtors through December 31st?

20 A No because I believe there is opportunities to
21 refinance or to find alternative financing.

22 Q And who do you think you would be able to refinance
23 through?

24 A I have no idea at this point but I do believe that it's
25 an option.

1 Q So it's fair to say that you are uncertain about where
2 financing is coming from after December 31st?

3 A At this point, yes.

4 Q Now Mr. Blank is proposing (indiscernible) to
5 financing. Doesn't that give greater certainty for years to
6 come?

7 A Yes.

8 Q And you wouldn't have to shop for new financing for
9 years if you were to go along and adopt the Blank proposal,
10 correct?

11 A Correct.

12 MR. WRIGHT: Judge, I'm going to object to the
13 line of questioning. We are going into exit financing which
14 is the subject of a confirmation hearing. We have strayed
15 away from the DIP financing before the court today.

16 THE COURT: Yeah I think that's true, Mr. Horan.
17 I will sustain the objection.

18 MR. HORAN: May I briefly respond to it, Your
19 Honor?

20 THE COURT: You may.

21 MR. HORAN: Thank you. IN their papers and from
22 the testimony we heard today what we keep hearing is that the
23 plan proposal is already locked in and the DIP is important
24 to that. They are not going to consider another DIP because
25 it's integral to the plan transaction. So I think its not --

1 granted this is not a plan confirmation hearing, but I think
2 these issues are in play today?

3 THE COURT: Alright, I will give you some leeway.

4 BY MR. HORAN:

5 Q Does the restructuring support agreement that is
6 presently being proposed contain a fiduciary out?

7 A Can you ask that again, please?

8 Q Does the restructuring support agreement that the
9 debtor is presently proposing and that's been voted on, does
10 that contain a fiduciary out?

11 A I'm not certain. I can't answer that.

12 Q It's mentioned in the reply brief that your company
13 filed yesterday. But given your testimony today about cost,
14 and uncertainty and all that do you think you would ever
15 exercise a fiduciary out?

16 A No.

17 Q Mr. Norvet isn't it true that last year you were
18 suspended by (indiscernible) for transactions regarding or
19 relating to this reply?

20 A That is correct.

21 MR. HORAN: I have no other questions, Your Honor.

22 THE COURT: Any redirect?

23 MR. WRIGHT: Yes, just a little bit.

24 REDIRECT EXAMINATION

25 BY MR. WRIGHT:

1 Q Mr. Norvet, you were asked about Mr. Blank and the
2 history of dealing with him. I think you said that he
3 attempted to buy the property at auction. Is that right?

4 A That is correct.

5 Q And was that on several occasions?

6 A Yes.

7 Q And prior to the bankruptcy filing were you aware of
8 any proposal by Mr. Blank that would have resulted in any
9 payments to any equity holders --

10 A No.

11 Q -- above and beyond the creditors.

12 A No, I'm not.

13 Q With respect to the questioning that you were asked
14 about whether or not you had shopped the deal prior to the
15 bankruptcy filing why didn't the debtors pursue financing
16 outside of Juniper?

17 A We were, at the time, still under construction.
18 Juniper offered to advance -- protective advances to complete
19 the resort and to open the resort on a timely manner. We
20 felt like that was the best alternative for us to get the
21 resort open.

22 Q It was also a concern of yours that any other lender
23 would want to prime the existing liens?

24 A Ask me that again, please, I'm sorry.

25 Q Was it also a concern that other lenders would want to

1 prime the existing creditors?

2 A Absolutely.

3 Q And, in fact, that is what Mr. Blank had proposed here
4 is he wants to prime Juniper by putting a second lien on the
5 real estate, correct?

6 A That is correct.

7 Q Now with respect to the exit fees those are only
8 payable if you pay off the debt and you don't go forward with
9 a plan that converts the debt to equity, correct?

10 A That is correct.

11 Q Is it your understanding that even if the court
12 approves the financing today that the debtors still have the
13 ability to either do the plan that is on the table or do a
14 different plan as promulgated by the Holland parties?

15 A Yes, that is correct.

16 Q In fact, what was rejected was the DIP financing
17 proposed by the Holland parties, not a restructuring plan
18 proposal. Is that correct?

19 A That is correct.

20 MR. WRIGHT: That is all I have.

21 THE COURT: Any re-cross?

22 MR. HORAN: No, Your Honor.

23 THE COURT: Thank you, Mr. Norvet. You are
24 excused.

25 THE WITNESS: Thank you, Judge.

1 (Witness excused)

2 MR. WRIGHT: Judge, that concludes our evidence.

3 THE COURT: Mr. Horan, do you have any evidence?

4 MR. HORAN: Yes. In support of our case we would
5 like to call Mr. Blank to testify.

6 THE COURT: Alright, I will ask him to say
7 something so that he can be sworn.

8 And I will ask Mr. Norvet to mute his line now.

9 THE COURT: Mr. Blank?

10 MR. BLANK: Good afternoon, Judge.

11 THE COURT: Alright, I will ask the clerk to give
12 you the oath.

13 ANDREW NORVET, WITNESS, SWORN

14 THE CLERK: Please state your full name and spell
15 your last name for the record?

16 THE WITNESS: Andrew Scott Blank, B-L-A-N-K.

17 THE COURT: You may proceed, Mr. Horan.

18 DIRECT EXAMINATION

19 BY MR. HORAN:

20 Q Good afternoon, Mr. Blank.

21 You executed a declaration in connection with the
22 Holland party's objection to the financing DIP proposal,
23 haven't you?

24 A Yes.

25 Q And is your testimony in the declaration that you made

1 still true?

2 A Yes, it is.

3 Q Can you please introduce yourself to the court by
4 telling us about your background and what you do for a
5 living?

6 A I am 65 years old. I'm happily married to an amazing
7 wife. We have one daughter together who proudly just took
8 the California Bar exam. I am Miami born and raised. I am a
9 business exec and entrepreneur with fairly broad exposure and
10 experience. I was the worlds' largest beer wholesaler,
11 Anheuser-Busch's largest wholesaler. I'm in the software
12 development business. I owned and operated multiple money
13 management firms.

14 I was a large shareholder, majority shareholder with a
15 childhood friend of mine of the nation's largest Spanish
16 language radio broadcasting company. I was in the television
17 programing business through a company called Video TubeBox
18 Network which was ultimately acquired by MTV. I'm in the
19 commercial warehousing business and real estate investment
20 business.

21 I am president of the Blank Family Foundation,
22 philanthropic private foundation that's distributed, give or
23 take, \$50 million to the underserved, elderly, youth,
24 medically challenged populations. I served for 12 years or
25 so on the Florida Public Service Commission Nominating

1 Council as chairman. I was appointed by the Florida senate
2 president and reappointed by subsequent presidents of both
3 political parties.

4 I chaired the foundation the nation's largest community
5 college. I serve on the board of privately held non-opioid
6 pain management company. I am chairman of the board of a
7 publicly held company in the heart failure space, also
8 biomed. I serve on a bank board. I'm on the executive
9 committee of the Greater Miami Jewish Federation. I am a
10 founder of the Park City Community Foundation and served for
11 many years on the board of a major hospital in Miami.

12 Q Thank you.

13 Mr. Blank, how did you become aware of Bishops Lodge?

14 A A friend of mine, Jerry Peters, who is very much
15 involved in Santa Fe, owns a bank there, owns a half a dozen
16 or so restaurant operations, owns the major art gallery in
17 town, has -- I call him Mr. Santa Fe. He's very much
18 involved in the fabric of the Santa Fe market. He was aware
19 of Bishops Lodge and their struggles to complete and cost
20 overrun, so on and so forth. The fact that they needed help
21 to progress the project to the level that was envisioned. So
22 I agreed to come out and visit and see the property, and make
23 a determination as to whether or not I had an interest in
24 investing there.

25 Q Did you determine that you did have an interest?

1 A Yes, I did.

2 Q What was attractive about it?

3 A I'm sorry?

4 Q What was attractive about Bishops Lodge?

5 A Well, one, I had close connections, as I mentioned, to
6 the Santa Fe business community. I liked very much the look
7 and feel of the project. I felt like if we did it right, you
8 know, we could turn what was a very challenging situation
9 where the partners were at each other's throats and the focus
10 was not where it needed to be.

11 Success of the project was very much in doubt. I
12 thought that we could, you know, bring it back to life, make
13 it work the way it was intended. I felt it was a legacy
14 investment for my family.

15 Q Now you intended to bid on auction for the assets.
16 What were the broad outlines of your intended bid?

17 A I would have bid an amount sufficient to pay both the
18 mezzanine lender and senior lender in full. On multiple
19 occasions, the mezzanine lender and mortgage lender were made
20 aware of that fact.

21 Q And, apart from the lenders, to who else did you
22 present these terms?

23 A To the equity holders of the debtor and also to the
24 receiver that was appointed by the senior lender; no
25 surprise, I think any party to the transaction that I was

1 interested in acquiring the property.

2 Q And did your proposal include a loan component?

3 A I'm sorry?

4 Q Did your proposal include a loan component?

5 A Yes, it did.

6 Q Could you tell me about that, please?

7 A Well, the mezzanine lender put off its sale process on
8 numerous occasions, in fact four occasions, actually, each of
9 which I was registered and qualified to bid that. That
10 resulted in extra interest in claimed fees, and so on and so
11 forth, but I ended up offering an zero percent interest loan
12 pending court approval of an auction process.

13 Q And, to your knowledge, before the bankruptcy case was
14 filed was the management of these debtors aware of your
15 proposals?

16 A A hundred percent. I had numerous conversations with
17 them about the contours of the recapitalization proposal on
18 the property.

19 Q And, knowing of your interest and your wherewithal,
20 before the bankruptcy case was filed, did the debtors'
21 management approach you about the possibility of you
22 providing debtor-in-possession financing in these cases?

23 A They did not.

24 Q And did they solicit you about entering into a
25 restructuring support agreement either?

1 A No, they did not.

2 Q And at the time that the bankruptcy case was filed, had
3 you presented an offer to the debtors to provide financing?

4 A I did, through my attorney to both debtors' counsel and
5 Mr. Mack, the independent director.

6 Q Now, there was a term sheet attached to your
7 declaration, is that the offer that you presented to the
8 debtors?

9 A Yes, it is.

10 MR. HORAN: Your Honor, I'd like to move the term
11 sheet attached as Exhibit A to Mr. Blank's declaration into
12 evidence?

13 THE COURT: Any objection?

14 MR. WRIGHT: I guess I would object to the
15 relevance of it because it is not a DIP financing proposal,
16 it's an alternative restructuring proposal, and that's a
17 confirmation issue.

18 THE COURT: Well, you can raise that later, but
19 any objection to that at least being part of the record?

20 MR. WRIGHT: No.

21 THE COURT: All right, I will admit it.

22 (Exhibit A received in evidence)

23 BY MR. HORAN:

24 Q And, broadly speaking, what does the term sheet
25 provide?

1 A It provides an alternative restructuring, a proposal
2 that contains a DIP financing at zero percent interest from
3 entities that I control, and it includes repayment of the
4 mortgage, debtors' mortgage, the mezzanine loans, the third
5 party mortgage debt that I'd arranged from my entities.

6 Q And, sitting here today, are you still prepared to
7 consummate that transaction if the debtors said yes?

8 A Yes. I mean, I have not protracted the proposal. I
9 clearly remain prepared to complete the transactions, you
10 know, included -- including the zero percent DIP loan in my
11 proposal.

12 Q And did you do anything to demonstrate to the debtors
13 that you have the ability to consummate those transactions
14 and provide the DIP?

15 A Yes, of course. I caused delivery of both the debt and
16 equity commitment letters to counsel for the debtors and to
17 David Mack demonstrating my ability to consummate the
18 alternative restructuring proposal, that those papers remain
19 in full force and effect and have not been terminated or
20 withdrawal in any way.

21 Q So it's right that you had both debt and equity
22 commitment letters?

23 A Yes, that is correct.

24 Q And can you tell me about the debt commitment that you
25 have?

1 A Yes, I'm happy to. The debt commitment was for \$55
2 million in new mortgage loan financing from a nationally
3 recognized lender, a third party lender. It included a four-
4 year term with a one-year extension option, so a total of
5 five years, and the interest rate at six and a half percent.
6 There's the one percent up-front fee payable at closing and
7 no exit fee.

8 Q And how about the equity commitment, describe that,
9 please.

10 A By the way, I'd like to mention that the one percent
11 up-front fee is for the \$55 million, not for the DIP loan. I
12 think I heard previous testimony suggest that somehow I was
13 charging a one percent fee for the DIP loan, I believe I
14 heard that correctly, but that's not correct.

15 Q Thank you for clarifying that. Now, how about this
16 equity commitment that you received, can you describe that,
17 please?

18 A I can. The equity commitment letter that I provided
19 provided equity financing -- it provided the equity financing
20 necessary to consummate the alternative restructuring
21 proposal that I've made. That commitment letter evidenced
22 liquid capital in an amount approximately double what was
23 necessary to consummate the alternative restructuring
24 proposal.

25 Q Now, with the term sheet, what were you trying to do?

1 Were you trying to reinvent the wheel or were you trying to
2 get close to what Juniper was doing?

3 A No, I mean, I was not trying to reinvent anything. In
4 fact, I was -- I intentionally kept the proposal as simple as
5 possible given the time pressures of the prepackaged plan. I
6 felt that I could step into the Juniper deal to lower the
7 execution costs and to avoid negotiation. The debtors had
8 already negotiated acceptable documentation. Juniper was
9 prepared to step in with those documents. That's why I
10 offered both the DIP facility and an exit plan. If I only
11 had offered a DIP, I feared somebody would cry foul by saying
12 that there's no exit commitment. I simply -- it simply
13 looked better, you know, from my perspective, that the
14 current loan and plan remained the same as that that was
15 integrated under the RSA.

16 So it was just a simple -- the same documentation, just
17 better terms, as simple as it gets.

18 Q And what are the more favorable terms that you're
19 offering?

20 A I was offering the same amount of DIP loan financing
21 with zero percent interest compared to the existing DIP loan
22 that the debtors are looking favorably upon, which is at six
23 percent. So it saved six percent in interest on the DIP
24 loan. The Juniper proposal has a ten percent exit fee; my
25 proposal had no exit fee. The savings over the term of the

1 DIP loan would run into the hundreds of thousands of dollars,
2 which, given a project that's losing money, you know,
3 operational losses, you know, it's significant. In addition,
4 we're far leaner and believe there our legal costs would be a
5 fraction of those that will be incurred under the Juniper
6 proposal.

7 My proposal includes a debt commitment for four years
8 with a one-year extension, as we mentioned before. That
9 eliminates substantial risk that exists in the Juniper
10 proposal given the uncertainty of a refinancing. The project
11 is not completed, there's substantial construction that
12 remains, and its cost overruns and operating losses and the
13 fact that it's missed the season, it's going into the winter
14 and the winter season is very -- you know, very challenging
15 in Santa Fe, people don't visit during that time of the year.
16 So those losses are expected to accelerate and I was bringing
17 sufficient capital to the table to weather that storm, and
18 that's the kind of storm that lenders tend to avoid. So I
19 thought that that -- you know, just that item was pretty
20 compelling.

21 Juniper's mortgage loan rate is approximately 11 and a
22 half percent, my proposal is for six and a half percent, that
23 saves four million -- you know, four and a quarter million
24 dollars a year just by itself. Juniper's stated equity
25 return in their proposal before the Court is 30 percent; my

1 proposal is 27 and a half percent. That creates a
2 substantially better prospect of return for the equity. My
3 lender is willing to lend additional funds for the completion
4 of Phase II, which is casitas that can be sold or put into
5 the hotel pool. That equity is non-dilutive to the current
6 equity holders and stands to unlock 25 to \$30 million in
7 additional proceeds that clearly is to the benefit of the
8 equity holders; Juniper has no such commitment.

9 That's basically -- you know, I think I've covered
10 most, if not all, of the advantages. I hope I answered your
11 question.

12 Q You did. And, given all these more favorable terms,
13 did the debtors ask you any questions about the term sheet?

14 A No, no. They have not -- they've not asked any
15 questions. Their lawyer asked for some documentation, but
16 there were no substantial questions asked.

17 Q And did your counsel provide that documentation to the
18 debtors?

19 A Yes, yes, he did.

20 Q And did you prepare loan documents and get this all
21 papered in anticipation of the proposal being accepted?

22 A No, we didn't prepare loan documents because we -- you
23 know, obviously, the debtors haven't engaged, but the loan
24 documentation is virtually the same documents that exist. So
25 the preparation -- the only preparation that's necessary,

1 basically, is changing the financial terms that we -- you
2 know, we've put forth. So we've already agreed in our
3 proposal to accept the existing loan documentation.

4 Q Do you have any idea, have you speculated why the
5 debtors haven't engaged with you about this proposal?

6 A I have no idea. I mean, it's incomprehensible, it's
7 inexplicable. I just -- I'm blown away by the fact that
8 they've refused to engage.

9 Q Well, if they were to take it, who would be better off
10 under your deal than under the Juniper deal, how is it better
11 -- or whose pot does it make better?

12 A Well, it pays the debtors off in full. So, I mean,
13 they came initially to lend money to the project and so
14 getting paid off in full, I would think, was a benefit to the
15 debtors -- I mean to the lenders. The debtors are better off
16 to the tune of \$25 million at the end of three years, which
17 is the time at which Juniper has indicated directly to me and
18 I believe to the debtors that they would be looking to sell
19 the project. That number continues to grow roughly \$12
20 million a year after that and there's the 25 to \$30 million
21 in incremental revenue that I just mentioned about the casita
22 construction in Phase II, for which there's really no funding
23 provided for by the current lenders, and it may not even be
24 constructed or value generated for the equity holders under
25 that plan where it is under mine.

1 I also believe that the property will sell for a heck
2 of a lot more money in five or ten years than it will in
3 three years where three years, the property is just getting
4 to the point of stabilization, it's not -- it's not in the
5 debtors' interest. And the debtors have acknowledged in
6 previous conversations that it is not in the debtors'
7 interest that whoever acquires this property sells it too
8 quickly. They get buried under that scenario. So the fact
9 that I'm a long-term holder and Juniper is not clearly
10 accrues to the debtors' benefit.

11 And the debtor -- at least in one instance, the debtor
12 is a fund. Michael Norvet indicated that, I think, in his
13 testimony. And those investors, which are mom-and-pop, small
14 investors, clearly benefit from our proposal, there's far
15 more money available for them than under the Juniper plan
16 that's before the Court.

17 And then, finally --

18 MR. WRIGHT: Judge, I'm going to object again.
19 The Juniper plan is not before the Court, it's before the
20 Court on October 7th, and this testimony is all going to a
21 discussion about different plans, not different DIP financing
22 proposals.

23 THE COURT: I understand. You can argue that, but
24 I'll again give them some leeway.

25 THE WITNESS: And then, finally, our proposal has

1 a (indiscernible) call feature that ensures that the debtors
2 and their beneficiaries, including those mom-and-pop
3 investors, have the right to put their interests to me at a
4 time -- at fair market value at a time of their choosing that
5 would allow them to feel comfortable that they're exiting the
6 project at a time where they're maximizing their returns, as
7 opposed to the Juniper scenario where Juniper decides when
8 the exit occurs, and debtors have no say in that aspect of
9 that deal. That's a pretty big --I thought a pretty big
10 advantage to the debtors.

11 BY MR. HORAN:

12 Q Did the debtors try to negotiate better terms of the
13 DIP than those presented in the term sheet, and just for the
14 DIP?

15 A I'm sorry, ask the question again?

16 Q As to the DIP --

17 A Yes.

18 Q -- that you've proposed in your term sheet --

19 A Yes.

20 Q -- did the debtors try to negotiate better terms with
21 the DIP?

22 A No, they did not.

23 Q If they'd asked for better terms, would you have been
24 open to a discussion about that negotiation?

25 A Yeah, absolutely.

1 Q And are you still open to negotiating?

2 A Of course.

3 Q If the debtors asked you to do a zero interest stand-
4 alone DIP, would you have done that?

5 A Well, I would certainly have been interested in the
6 discussion, yes.

7 MR. HORAN: Just one second, please.

8 (Pause)

9 MR. HORAN: Those are all the questions I have.

10 THE COURT: Thank you.

11 Any cross?

12 MR. WRIGHT: Yes, Judge.

13 CROSS-EXAMINATION

14 BY MR. WRIGHT:

15 Q Mr. Blank, the proposal that you did make that's in
16 your term sheet, that is not a stand-alone DIP, is it?

17 A It contains DIP financing.

18 Q Right, it includes DIP financing, but it also includes
19 plan provisions as well, right?

20 A Yeah, yeah. It (indiscernible) --

21 Q Because, I mean, what you're talking about here --

22 A -- (indiscernible) --

23 Q -- before your loan --

24 THE COURT: Please, let him finish his answer.

25 MR. WRIGHT: Okay.

1 THE WITNESS: It is a comprehensive proposal,
2 including the DIP feature, yes.

3 BY MR. WRIGHT:

4 Q Right. And the four-year loan that you referenced,
5 that would be a loan under the proposed plan terms that you
6 would make, right?

7 A It's the -- it's an -- it's a loan that your clients
8 have been aware of for months. This is not a new issue; this
9 is an issue that's been on the table. The only change in the
10 loan has been an improvement in the interest rate and other
11 features; it increased from 53 million to \$55 million, the
12 interest rate decreased, so on and so forth, but it's the
13 same loan that has been -- that was brought to your attention
14 long before the proposal that went to the Court.

15 Q My question, though, is -- really is what we call exit
16 financing. It's the loan that you would be putting in place
17 when the company exited bankruptcy, right?

18 A I'm not a bankruptcy attorney, I -- well, that's a
19 little more technical than I'm capable of answering right
20 now.

21 Q Well, let me ask you this way. That loan would be
22 intended to take out the existing creditors, is that right?

23 A It would.

24 Q And the six and a half percent interest rate that you
25 mentioned, that would be an interest rate that would be

1 charged in connection with that facility, not in connection
2 with the DIP facility?

3 A It is a -- it is a -- yeah, it is a loan, yeah. I
4 mean, they're both loans.

5 Q All right. And then the -- under your DIP financing
6 proposal, there would be a requirement for a lien on the real
7 estate, is that correct?

8 A Ask the question again. I'm sorry.

9 Q Okay. Under your proposal, as I read it, it requires
10 that the loan be secured, the DIP financing loan be secured
11 by a lien on the real estate, is that correct?

12 A I don't recall the specific provision.

13 Q Well, if it's in the term sheet, you would stand by
14 that?

15 A Yes.

16 Q And you understand that Juniper does not have a lien on
17 the real estate, so effectively that would put a lien of
18 that. Do you understand?

19 A I'm not arguing the point with you; I don't know the
20 answer, but I'm not arguing the point.

21 Q Now, you do admit that prior to the bankruptcy filing
22 you had planned to purchase the property at a UCC sale, is
23 that correct?

24 A At four of them.

25 Q Okay. And in purchasing the property at the UCC sale,

1 was it going to be your intention to buy it for the debt?

2 A That's impossible to say. I don't know how to answer
3 that question. Depending on the nature of the bidding, it
4 could have been more than the debt.

5 Q If you were not outbid, you would have planned to pay
6 off the Juniper debt, is that right?

7 A Well, I wouldn't -- it was not the plan to bid more
8 than what was necessary to prevail at the auction, if that's
9 -- is that your question?

10 Q Yes.

11 A Okay.

12 Q Now, you've referenced to mom-and-pop investors, are
13 you talking about mom-and-pop investors at --

14 A May I correct that?

15 Q Yes.

16 A My recollection of the rules of the auction were that
17 you had to bid in increments of \$250,000. So, assuming that
18 the lenders bid their loan amount, then my bid would have had
19 to have been \$250,000 more than that in order to prevail. So
20 the answer is I would have bid more, but I think in any event
21 then the debt -- maybe much more, but at least that much
22 more.

23 Q At least \$250,000 more --

24 A Yes.

25 Q -- is that what you're saying? Okay.

1 A Yeah.

2 Q Mr. Blank, currently, are you an investor in BL Santa
3 Fe Holding?

4 A Yes -- oh, I'm sorry, no. The various BL Santa Fe --
5 you know, I mean, the names are so similar, but no.

6 Q And you're not holding yourself out as an interest
7 holder in either of the debtors, are you?

8 A No.

9 Q Do you have a creditor claim against either of the
10 debtors?

11 A I believe I do, yes.

12 Q How much?

13 A I don't know the number off the top of my head, north
14 of -- certainly north of a million dollars.

15 Q What's it for?

16 A The costs -- the deal costs that I'm entitled to under
17 an agreement with the managing member.

18 Q Is that an agreement that was signed by Mr. Holland?

19 A It was signed by Mr. Holland, correct.

20 Q Do you have any prior hotel experience?

21 A Well, I -- how do you define hotel experience?

22 Q Well, let me ask you this --

23 A That has a lot to do with how I would answer that --

24 Q All right.

25 A -- but, yes, I know a great deal about hotels and hotel

1 operations because I have -- I've never owned a hotel, but I
2 am not -- I don't lack knowledge in terms of hotel
3 operations.

4 Q Okay, back on my question on -- you were referencing to
5 mom-and-pop investors. Are you referring to investors in
6 Holding?

7 A In Titan Securities.

8 Q Okay. And so you're talking about with respect to the
9 investment of Evolution that it has in Holding, is that
10 right?

11 A That is correct.

12 Q And you've already heard the spokesman for Evolution,
13 Mr. Norvet, tell the Court that Evolution is in favor of the
14 DIP financing that's (indiscernible) correct?

15 A I did hear that, yeah -- shockingly, but yes. I --

16 Q Well, and you don't have any official position
17 representing the investors in the Evolution Fund, do you?

18 A I'm sorry?

19 Q You don't have any stake in the Evolution Fund; you're
20 not an investor, are you?

21 A No, I am not investor. No, I am not.

22 MR. WRIGHT: I'll pass the witness.

23 THE COURT: Any redirect, Mr. Horan?

24 REDIRECT EXAMINATION

25 BY MR. HORAN:

1 Q Mr. Blank, the DIP loan you're offering is secured,
2 right?

3 A I'm sorry?

4 Q The DIP loan that you're offering would be a secured
5 DIP facility, is that right?

6 A Yes, yeah.

7 Q But you're also committed to pay off Juniper, right?

8 A Correct, as well as (indiscernible).

9 Q Is there anything else that you'd like to tell the
10 Court about your DIP proposal that you don't feel that you
11 got a chance to say?

12 A No, I just felt -- I feel like it's clearly superior,
13 it doesn't require any significant documentation or
14 expenditures or time to make it happen, all of which were
15 things that previous witnesses suggested was the case, none
16 of that is true.

17 The other thing that I recall hearing in today's
18 proceedings was that none of my pre-bankruptcy offers would
19 have led to returns to the debtors and that is just totally
20 inaccurate. It is, I think, disingenuous and not supported
21 by the facts. Those proposals did offer significant returns
22 to the debtors.

23 MR. HORAN: Your Honor, I have nothing else for
24 the witness, but I do have one housekeeping item, Your Honor.

25 THE COURT: Well, let me see if there's any

1 further recross.

2 MR. WRIGHT: Nothing else, Judge.

3 THE COURT: All right.

4 MR. HORAN: Thank you. I don't think that I moved
5 Mr. Blank's declaration into evidence and I would just like
6 to make sure that I do that if I failed to.

7 THE COURT: I think you offered only the term
8 sheet, but --

9 MR. HORAN: Okay.

10 THE COURT: -- any objection to --

11 MR. WRIGHT: I don't have an objection to the
12 declaration.

13 THE COURT: All right, then the declaration with
14 the attached term sheet is admitted into the record.

15 (Blank declaration received in evidence)

16 THE COURT: And thank you, Mr. Blank, you may be
17 excused.

18 THE WITNESS: Thank you.

19 (Witness excused)

20 THE COURT: All right. I'll hear argument then.

21 I think I heard from the debtor. Mr. Horan, do
22 you want to?

23 MR. HORAN: Yeah, I have a few comments, Your
24 Honor.

25 You know, what the evidence showed today is a

1 failure of the debtors both pre and post-petition to shop for
2 the best deal for all the stakeholders, including the equity,
3 and it also shows that there's a better deal on the table,
4 but they refuse to take it.

5 And the thing that struck me the most about the
6 testimony today was that of Mr. Norvet when I asked him about
7 whether the debtors would exercise their fiduciary out and
8 his answer was no. I'm astounded by that. I mean, it's an
9 admission that the process that they're proposing is the
10 process no matter what, no matter if better terms come along,
11 no matter if Mr. Blank has offered a better deal, they're not
12 going to exercise their fiduciary out, and I think that that
13 just shows Your Honor that this was a process that wasn't
14 tailored for anything other than this DIP and the plan we're
15 going to talk about in a couple of weeks. They've locked
16 themselves into it; they're not looking for any way out of
17 it. It all begs the question of why they're so intent on
18 this deal with Juniper and have been all along, and so much
19 so that they wouldn't even shop around before locking in with
20 Juniper and they're not going to exercise their fiduciary
21 out.

22 They readily admit that prepetition they only
23 talked to Juniper. They knew Mr. Blank was out there, they
24 knew he was interested in the business, but they didn't ask
25 him for a proposal. And even if the purpose of that would be

1 to get Juniper to offer better terms and using it as a
2 stalking horse, shop it against Juniper, they didn't do that.
3 And the evidence shows that prior to the filing of the case
4 that Mr. Blank was prepared to bid at auction.

5 So, despite this interest and they knew about it,
6 they never asked him about his interest in offering a
7 competing transaction. And since the case filed he's offered
8 the term sheet, on superior terms, we submit, but the debtors
9 didn't respond to it other than to summarily dismiss it by
10 email earlier this week.

11 And the debtors contend that they've appropriately
12 exercised their business judgment, but I'd submit, Your
13 Honor, that the shelter of the business judgment rule isn't
14 available where, as the debtors have done, the company has
15 completely shut its ears and its eyes to not only the
16 potential for a higher and better deal for the company, but
17 that there's one on the table and they're going to ignore it.
18 And, again, they've stated, even if one comes along, they're
19 not going to do it. Even if they think this isn't the deal,
20 if another one comes along, they're not going to do it
21 because they wouldn't exercise their fiduciary out.

22 I think if the debtors sincerely wanted to engage
23 about DIP, they could have gone to Mr. Blank and see if he's
24 interested. And that's after the case is filed and they
25 received the offer from Mr. Blank, they could have said to

1 him, okay, we see your term sheet, but here are the deal
2 documents with Juniper, you've got 24 hours, 48 hours, mark
3 them up, get it back to us and we can compare them. They
4 didn't ask for that. They just sat on the offer and then
5 rejected it without telling Mr. Blank why his offer wasn't of
6 interest or why it was unacceptable.

7 So we request that Your Honor deny the motion
8 because, first, it doesn't represent the best deal available,
9 not by a long shot, and that's ultimately to the detriment of
10 equity here, and the Blank proposal is in every respect more
11 favorable. He's demonstrated his ability to close, he's got
12 the backup. And, second, I just emphasize this again: the
13 process is fatally flawed that got you this DIP.

14 The bankruptcy requires a debtor to be a good
15 steward of estate assets, the process is important and, on
16 the evidence before the Court today, it shows that the
17 debtors have been willfully blind to the possibility that
18 there could be any other transaction than the Juniper one.
19 And, for that reason, this DIP doesn't pass muster and it
20 should be -- the motion should be denied.

21 THE COURT: Thank you.

22 Does the debtor wish to respond?

23 MR. WRIGHT: Yes, Judge. And I'll try not too
24 much to repeat myself from the opening.

25 The argument is that the debtor has failed to shop

1 for the best deal, but the testimony is different. The
2 testimony is that the debtor had existing lenders that it was
3 working with, that those lenders were making sure that the
4 project got completed; they were continuing to advance, make
5 protective advances, even beyond their debt limits, in order
6 to get this property completed. And that because of the
7 state of construction that the property was in and because of
8 the concern that other lenders are going to want priming
9 liens, which is true of the Blank proposal, it wants a
10 priming lien. That the debtors made the decision to take the
11 DIP financing that was being offered by the two existing
12 lenders as opposed to looking to other lenders who loaning
13 into a construction site would want to prime the existing
14 debt, the debtors wanted to avoid that fight and they wanted
15 to stay with the -- you know, stay with the one who brung
16 you, is often said, because of the relationship and the trust
17 factor that exists in that these lenders have done what they
18 have said that they will do.

19 They did talk to Mr. Blank and that was the
20 testimony today, that those conversations started back in
21 January of 2021 and that Mr. Blank made repeated attempts to
22 try to buy the property, especially through his ESET, four
23 times at UCC sale, which, as we all know, would have
24 eliminated most likely any return for the equity.

25 Mr. Blank is effectively a bottom feeder; he is

1 trying to buy the property as cheaply as he can get it. But
2 whether or not his plan stands muster here is something to be
3 decided on October 7th. This DIP financing that the Court is
4 being asked to approve does not foreclose the ability of the
5 debtors to accept a different plan if they choose not to go
6 forward with the one they have set for hearing on October 7th
7 and it doesn't foreclose the ability of Mr. Blank through Mr.
8 Holland to raise an issue -- or an objection with respect to
9 the plan.

10 But you have to stand back and also think about,
11 you know, we have a Mr. Blank who has no direct connection to
12 this case other than he asserts that he has some claim for a
13 million dollars because he's run up costs in connection with
14 a bid, and then we have two lenders who are owed over \$70
15 million who have signed an RSA and are supportive of the plan
16 that is before the Court on October 7th, and we have over 90
17 percent of the equity investors in Holding, the only equity
18 group that we have in this case, and they're all in favor
19 both of this DIP financing.

20 And Mr. Norvet's testimony wasn't that -- I don't
21 think he understood the word "fiduciary out," I don't think
22 he understood the term. When he was asked other questions
23 with respect to can the debtor still consider other plans, he
24 said yes. And so I don't think he understood what was being
25 asked when he answered that specification question. The

1 reality is, whether he understood or didn't understand it, is
2 the debtors still have the ability, they're not foreclosed by
3 accepting a DIP financing from changing horses and going with
4 a different plan; they would be, though, if we approved the
5 term sheet that was presented by Mr. Blank. That one is
6 specifically tied to his plan and there is no other option,
7 it wasn't presented as a stand-alone DIP facility before the
8 Court.

9 Yes, there is a lower interest rate being offered
10 by him of zero percent interest and that would be very
11 attractive if this was a six-month or a twelve-month case,
12 but it's not. And as Mr. Norvet testify, when he evaluated
13 with the board and with the independent director the cost of
14 switching, the cost of documentation, which Mr. Blank
15 admitted he has not prepared loan documents with respect to
16 his proposal, the delay involved, the possibility of losing
17 the benefits of the plan that's already on file, and losing
18 the relationship that has been built up with Juniper and DB
19 Bishops, it was his evaluation that staying with the DIP
20 facility and asking the Court to approve this financing makes
21 the most sense for the estates.

22 So we would ask the Court to approve this on a
23 final basis, and if they have additional issues they want to
24 raise at confirmation, I think most of what they raised today
25 can be raised at that time.

1 Thank you.

2 THE COURT: Any response, Mr. Horan?

3 MR. HORAN: Your Honor, in that statement Mr.
4 Wright attempted to rewrite the restatements in Norvet's
5 testimony. Mr. Norvet's testimony is what it was, not what
6 Mr. Wright wishes, and when you're listening to or
7 considering this, I think you should listen closely to what
8 Mr. Norvet said and not what Mr. Wright wants to tell you
9 that he thinks he should have said.

10 And that's all I have, Your Honor.

11 THE COURT: Well, I agree with Mr. Horan that the
12 testimony has raised some serious issues in my mind about the
13 debtors' ability or intent to fulfill its fiduciary duty to
14 consider other options. I'm also concerned that approving
15 the DIP on a final basis will tie the debtors' hands to a
16 timetable and a process that may not allow the debtor, even
17 if it wanted to fulfill its fiduciary duty, the process might
18 preclude it from considering on a level playing field
19 alternative proposals.

20 But I appreciate that Mr. Blank feels that he has
21 made the DIP proposal in order to allow the debtor to
22 consider it, but the fact that the alternative DIP is tied to
23 the debtor agreeing to his proposal makes it just as
24 problematic as the debtors'.

25 And while the Court in considering a DIP should

1 consider and gives the debtor considerable deference in
2 exercising its business judgment, I think that bankruptcy
3 requires the Court to also consider whether the debtor is
4 prepared to fulfill its fiduciary duty. It's not just a
5 reasonable business person once we're in bankruptcy.

6 I'm sorry, I don't have pulled up the terms of the
7 DIP, is there a deadline by which I have to approve a final
8 DIP, Mr. Wright?

9 MR. WRIGHT: I'd need to look at the interim order
10 to see if we have an expiration date built into it --

11 THE COURT: Yes.

12 MR. WRIGHT: -- into the milestones as well, and
13 if anyone else knows that milestone date, that would be
14 helpful.

15 THE COURT: I just typed in the confirmation and
16 the effective date milestones I did not --

17 MR. BAYLEY: Your Honor, if I may?

18 THE COURT: Yes.

19 MR. BAYLEY: This is Christopher Bayley, law firm
20 of Snell & Wilmer, on behalf of the Juniper parties. The
21 milestone that's attached to the interim DIP says that the
22 debtors "to obtain the entry by the bankruptcy court of the
23 final DIP financing order in form and substance acceptable to
24 the non-debtor parties in their sole discretion on or before
25 25 calendar days following the petition date."

1 My recollection, Your Honor, and what shall be
2 correct as the petition date was August 30th. So the time is
3 nigh, Your Honor.

4 THE COURT: Well, I'm going to suggest that we
5 take a break and the parties talk because, given my grave
6 concerns about this, I'm not certain I'm prepared to approve
7 it today. I'd like the parties to talk about my concerns and
8 how they can be alleviated on both sides. I'll present this
9 to both counsel for the debtor and counsel for Mr. Blank or
10 Mr. Holland, how can you solve my problems with each of your
11 alternative DIP proposals.

12 How long do the parties think they might want to
13 talk? I know you probably have a number of client parties to
14 talk to. Do we want to come back at the end of today or do
15 you want to try for tomorrow morning? I have all of tomorrow
16 open.

17 MR. WRIGHT: I think the end of today, if we could
18 come back, let's -- like at 5 o'clock Eastern?

19 THE COURT: That might make it.

20 MR. WRIGHT: It might, it might.

21 THE COURT: All right. Any objection, Mr. Horan,
22 5 o'clock?

23 MR. HORAN: Five o'clock is good.

24 THE COURT: All right. Then let's recess until 5
25 o'clock and see where we can go at that time. Thank you.

1 (Recess taken at 3:33 p.m.)

2 (Proceedings resumed at 5:00 p.m.)

3 THE COURT: Good afternoon. This is Judge Walrath
4 and we're back on the record in the BL Santa Fe case.

5 I'll turn it over to counsel for the debtor and
6 see where we are.

7 MR. LUNN: Thank you, Your Honor. It's Matthew
8 Lunn from Young Conaway on behalf of the debtors.

9 I appreciate the time, we have -- I think we've
10 used it productively, at least from the debtors' side. We
11 obviously engaged in conversations with our lenders. We
12 reached out to counsel for Mr. Holland to see if we can come
13 and reach some sort of agreement with respect to addressing
14 Your Honor's concerns right now. And I think where the
15 debtors have been able to drive the process -- and, again,
16 the debtors were focused on -- I think this came across --
17 the debtors were focused on the DIP and not the overall plan
18 restructuring proposal was there. And I think Your Honor
19 also heard that we do have an independent director that's
20 been appointed, there's been a special committee.

21 So a lot of this is going into where I would
22 propose -- or what the proposal would be with respect to the
23 final DIP, which is the debtors have secured an agreement
24 from its lenders to adjourn or extend the final DIP milestone
25 by two weeks to the confirmation hearing date of October the

1 7th.

2 Interestingly, about 35 minutes ago, we received a
3 stand-alone DIP proposal from Mr. Blank; obviously, we
4 haven't had a chance to evaluate it, but this goes part and
5 parcel with what the other condition would be. The debtors
6 are committing and, in particular, the independent director
7 is going to commit to continue to evaluate proposals that
8 come across from Mr. Blank, and any other third party that
9 comes across he will evaluate, as he has, the plan proposal,
10 he's going to evaluate this stand-alone DIP proposal in
11 connection with the duties that Your Honor has outlined with
12 respect to a debtor-in-possession. Again, we would make that
13 commitment.

14 There would be a -- sort of to document this, we
15 would need a further interim hearing, because I think some of
16 the borrowings may need to adjust a little bit and we're
17 still looking at that in terms of budgeting and the like, but
18 we would propose that it just be a simple further or second
19 interim order to move out the milestone and any other
20 borrowings that we would need to do under -- to move the
21 process by two weeks, basically, Your Honor.

22 So that would be the debtors' proposal to address
23 Your Honor's concerns with respect to final approval of the
24 DIP.

25 THE COURT: All right. So you're looking to

1 continue this until October 7th and you'll submit a form of
2 order that would change the DIP final hearing, final order
3 milestone, as well as the bar date.

4 Mr. Horan, do you have any comments on that
5 proposal?

6 MR. HORAN: Yeah. And can you hear me, Your
7 Honor? I'm having a little trouble with the audio.

8 THE COURT: I can.

9 MR. HORAN: Oh, thank you so much.

10 First, I want to give you a brief overview of
11 what's proposed because it's a total game changer.

12 MR. LUNN: Your Honor, I don't think it's --

13 THE COURT: Well, Mr. Horan, I don't want to get
14 into the terms of your proposal --

15 MR. HORAN: Okay, Your Honor.

16 THE COURT: -- if in fact the debtor is committed
17 to considering that, obviously, before the October 7th
18 hearing.

19 MR. LUNN: And just to make clear, Your Honor --
20 it's Matthew Lunn -- we are committing to do that. I just
21 want -- so the record is completely clear, we are committing
22 to evaluating that proposal that comes in -- that just came
23 in.

24 THE COURT: Okay. All right. And are you okay
25 with this two-week extension, if you will, Mr. Horan?

1 MR. HORAN: The concern I have with that, Your
2 Honor, is that, you know, really, again, it goes back to the
3 fact that the DIP and the RSA are so intertwined and we're
4 driving this right towards the plan confirmation date. And,
5 you know, I understand and don't doubt for a second Mr.
6 Lunn's representations, but I do have that concern.

7 MR. LUNN: Your Honor, and we understand that, you
8 know, it has the appearance that these things are coupled
9 together, but what I would remind Your Honor of is we have a
10 plan that's on the table that proposes to pay general
11 unsecured creditors in full.

12 THE COURT: Well, I don't need to get into the
13 details --

14 MR. LUNN: No, I --

15 THE COURT: -- of plan confirmation either.

16 MR. LUNN: No, all I'm saying -- I say that with
17 the following -- sort of the reason, Your Honor, is the
18 debtors are trying to preserve that to get to that end
19 result, which is clearly an outstanding result where
20 unsecured creditors are being paid in full, and we're trying
21 to hold that together and get to a confirmation that gets
22 that goal. If there's a better deal to be proposed, there's
23 a better deal to be proposed, and we're committing to
24 evaluating that proposal.

25 THE COURT: Well, I just -- for the record, I will

1 agree to any order extending the interim DIP, subject to your
2 submitting a revised bar date and subject to the debtors'
3 commitment that it will consider all proposals for
4 alternative DIPs and for alternative plans during that
5 interim.

6 MR. LUNN: Thank you, Your Honor. We'll prepare a
7 form of order and submit it under certification of counsel
8 for your consideration.

9 THE COURT: All right, and thank you. It sounds
10 like both parties have taken my comments to heart and I hope
11 you can make some progress.

12 All right, we'll stand adjourned then.

13 MR. LUNN: Thank you, Your Honor.

14 THE COURT: Thank you.

15 MR. HORAN: Thank you, Your Honor.

16 (Proceedings concluded at 5:06 p.m.)

17 CERTIFICATE

18
19 We certify that the foregoing is a correct transcript
20 from the electronic sound recording of the proceedings in the
21 above-entitled matter.

22 /s/Mary Zajackowski
23 Mary Zajackowski, CET**D-531

September 24, 2021

24 /s/ Tracey J. Williams
25 Tracey J. Williams, CET-914

September 24, 2021